

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

GOFF GROUP, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Case No. 02:06-cv-00389
)	
PHOENIX-DURANGO, L.L.C. , <i>et al.</i>)	
)	
Defendants.)	

MOTION TO STAY PROCEEDINGS PURSUANT TO 11 U.S.C. § 362

Comes Now Susan Shirock DePaola, Trustee of the Bankruptcy Estate of the Goff Group, Inc., by her attorneys, Leonard N. Math and Chambless Math ❖ Carr, P.C. and moves this Court for a stay of proceedings and in support thereof states as follows:

1. On April 28, 2006, this matter was removed to this Court from the Circuit Court for Montgomery County, Alabama. This action seeks recovery on behalf of the Goff Group, Inc. and John W. Goff, individually, against Defendant Phoenix-Durango, L.L.C. and its individual members for alleged wrongful conduct in the acquisition and attempted enforcement of a mortgage against real estate located at 80 Technacenter Dr., Montgomery, Alabama. On May 25, 2006, the Defendants filed an Amended Answer and Counterclaim against the Plaintiffs Goff Group, Inc. and John W. Goff.

2. On June 9, 2006, the Defendant, Goff Group, Inc. filed for relief under Chapter 7, Title 11 of the United States Code (hereinafter the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Alabama, Case No. 06-30676. On June 12, 2006, the Court appointed Susan Shirock DePaola as the Chapter 7 Trustee in the case.

3. Pursuant to 11 U.S.C. § 362(a)(1), the filing of the petition for relief operates as stay against the commencement or continuation of any legal proceedings to recover a claim against

the debtor which arose before the commencement of the bankruptcy case.

4. Pursuant to 11 U.S.C. § 544, the Chapter 7 Trustee has the rights of a hypothetical lien creditor as of the date of the commencement of the bankruptcy case. As such the Chapter 7 Trustee has concurrent rights with the Plaintiffs to set aside any transfer of property of the Goff Group, Inc. pursuant to Code of Alabama, § 8-9A-1 *et seq.*

5. Finally, pursuant to 11 U.S.C. § 541, the bankruptcy estate is comprised of all legal and equitable interests of the debtor as of the date of filing. In Chapter 7 cases, all pre-petition causes of action belong to the estate and generally must be prosecuted by the trustee. *In re Dur Jac Ltd.*, 254 B.R. 279, 288 (Bkrtcy.M.D.Ala.2000) cited in *Snowden v. Fred's Stores of Tennessee, Inc.*, 419 F.Supp.2d 1367 (M.D.Ala. Mar 10, 2006).

6. As the duly appointed Chapter 7 Trustee, Susan Shirock DePaola is entitled to a stay of these proceedings pending determination of the exercise or non-exercise of her powers under the Bankruptcy Code and state law.

WHEREFORE, Susan Shirock DePaola, Trustee of the Bankruptcy Estate of the Goff Group, Inc., prays for an order staying these proceedings pending a determination of the exercise or non-exercise of her powers under the Bankruptcy Code, along with such further and other relief as the Court may deem proper.

SUSAN SHIROCK DEPAOLA,
Trustee of the Bankruptcy Estate of Goff Group,
Inc.,

s/ Leonard N. Math
Attorney for the Susan Shirock DePaola, Trustee of
the Bankruptcy Estate of Goff Group, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served on all attorneys of record by electronic notice and/or by depositing a copy thereof in the United States mail postage prepaid as follows on this 31st day of August 2006:

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